

recpt # 3348

SUM 155
1538

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLENE R. McABEE,
Plaintiff,

vi.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
AND THOMAS CHEFFINS; and
THE PENNSYLVANIA STATE CIVIL
SERVICE COMMISSION, JOHN J. WILK
AND RONALD K. ROWE,
Defendants.

CASE NO. 05 0564.



NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLENE R. McABEE,
Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
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SERVICE COMMISSION, JOHN J. WILK
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Defendants.

CASE NO.

CIVIL COMPLAINT

AND NOW, comes the plaintiff, Charlene R. McAbee through her Pro Se Attorney, Cheryl McAbee and files the within Civil complaint and in support thereof avers the following:

PRELIMINARY STATEMENT

This is a civil rights action for damages grounded in the Fourteenth Amendment to the United States Constitution, 42 U.S.C. sections 1981, 1983, and 1988, and Title VII (42 U.S.C. 2000e et. Seq.) and the Age Discrimination in Employment Act of 1967, as amended (ADEA). There are also pendent jurisdiction claims grounded in the Pennsylvania Constitution Article 1 sections 1,2,5,7,11, and 26, and The Pennsylvania Human Relations Act, (43 P.S. section 955).

Plaintiff Charlene R. McAbee alleges that she and her sister, Cheryl R. McAbee were as qualified as the successful candidate yet they were disqualified for reasons the successful candidate was qualified for, because of race (African American) and age (over 40).

Reduced to its essence, this case involves a custom, pattern, and policy of discrimination, and retaliation, related to events and circumstances, involving the employment practices of the Department of Public Welfare and the PA Civil Service Commission.

What the Plaintiff contends here is uncomplicated, that is, that she has been denied equal employment, and retaliated against, as per a custom, policy, and practice that systematically discriminates against African-Americans, women, and applicants over forty years of age.

That is, the Commonwealth of Pennsylvania State Civil Service Commission failed to acknowledge the Plaintiff's application for the position Welfare Appeals Manager, until given documented proof that a timely application was made. Apparently, such is a custom, pattern, and policy that the Commonwealth used to deny equal employment opportunities.

In particular, the Commonwealth of Pennsylvania State Civil Service Commission knowingly refused to rate the Plaintiff's examination for Welfare Hearings Appeals Manager as "Well Qualified."

However, Katrina Dunderdale, an applicant who was not a member of the relevant protected-class was interviewed for the position Welfare Hearings Appeals Manager. She was apparently rated "Well-Qualified." Ms. Dunderdale did not supervise others as required for a "Well-Qualified." rating, by the close of the application date.

Plaintiff was as qualified as the successful candidate yet was disqualified for reasons the successful candidate was qualified.

When the Plaintiff appealed the decision, as retaliation against the Plaintiff, her sister, Cheryl McAbee, a former law clerk in Pittsburgh BHA office, was denied continued employment. That is, as part of the custom, pattern and practice, the two older law clerks in the Pittsburgh office were eliminated.

Further, what the Plaintiff contends here is that she has been denied a public employee liberty interest to dispute the rating, and/ or denied a timely opportunity to clear her good name.

This federal constitutional claim, the Plaintiff contends arises not from the defamatory, or stigmatizing conduct per se, but from the denial of a timely name-clearing hearing to prove that she was qualified.

The Plaintiff contends that the right to one's reputation is recognized in the Pennsylvania Constitution. The Plaintiff contends she was deprived rights secured by both the U.S. and the Pennsylvania Constitutions, under the color of statute, ordinance, regulation, or a custom, pattern and practice.

JURISDICTION

Plaintiffs invoke this courts jurisdiction pursuant to 28 U.S.C. section 1331, section 1342 (a) (3) & (4), section 1343, and section 626. This court has jurisdiction over Plaintiffs state claims pursuant to its supplemental jurisdiction as codified at 28 U.S.C. 1367.

Plaintiffs have exhausted all administrative remedies before The Pennsylvania Human Relations Commission (PHRC) and The Equal Employment Opportunity Commission (EEOC).

VENUE

All actions complained of herein occurred within the jurisdiction of this court and involves a defendant who is within its jurisdictional reach. Venue is invoked pursuant to 28 U.S.C. section 1391(b) and 1391(c).

PARTIES

1. Charlene R. McAbee, Esquire, is a citizen of the United States who resides in the County of Allegheny, 2005 Garrick Drive, Pittsburgh, Pennsylvania 15235. Hereinafter Plaintiff.

2. Defendant, Commonwealth of Pennsylvania, Department of Public Welfare (DPW), is a Department duly organized under the laws of the Commonwealth of Pennsylvania, and is a unit of a political sub-division of the Commonwealth and operates within the government of the Commonwealth and the United States, with a principle place of business of, Health & Welfare Building, Room 333, 7th & Forster Streets, Harrisburg, Pa. 17120 and a Regional Office at PA State Office Building, 300 Liberty Avenue, Room 611, Pittsburgh, PA 15222. Hereinafter Defendant DPW.
3. Defendant, Thomas Cheffins, Director, Bureau of Hearings and Appeals of the DPW, is an agent of defendant DPW, and is a citizen of the United States, with a principle place of business of, DPW Bureau of Hearings and Appeals, 2330 Vartan Way, 2nd floor, Harrisburg, Pa. 17110-9721 and a Regional Office at PA State Office Building, 300 Liberty Avenue, Room 611, Pittsburgh, PA 15222. Hereinafter Defendant Cheffins.
4. Defendant, Commonwealth of Pennsylvania, State Civil Service Commission (CSC), is a Department duly organized under the laws of the Commonwealth of Pennsylvania, and is a unit of a political sub-division of the Commonwealth and operates within the government of the Commonwealth and the United States, with a principle place of business of, 320 Market Street, PO Box 569, Harrisburg, PA 17108-0569 and a Regional Office at PA State Office Building, 300 Liberty Avenue, 15th Floor, Pittsburgh, PA 15222. Hereinafter Defendant CSC.
5. Defendant, John J. Wilk, former Executive Director, State Civil Service Commission, is an agent of defendant CSC, and is a citizen of the United States, with a principle place of business of, State Civil Service Commission, 320 Market Street P.O. Box 569,

Harrisburg, PA 17108-0569 and a Regional Office at PA State Office Building, 300 Liberty Avenue, 15th Floor, Pittsburgh, PA 15222. Hereinafter Defendant Wilk.

6. Defendant, Ronald K. Rowe, Executive Director, State Civil Service Commission, is an agent of defendant CSC, and is a citizen of the United States, with a principle place of business of, State Civil Service Commission, 320 Market Street P.O. Box 569, Harrisburg, PA 17108-0569 and a Regional Office at PA State Office Building, 300 Liberty Avenue, 15th Floor, Pittsburgh, PA 15222. Hereinafter Defendant Rowe.
7. At all times relevant hereto, the actions of the agents, employees, and/or representatives of Defendants DPW and CSC will be collectively referred to throughout this complaint as Defendants, except where otherwise noted.
8. At all times relevant hereto, the actions of Defendants, its agents, and/or representatives, was specifically done within the scope of the employment relationship, and with knowledge and/or at the behest of the management of Defendants.
9. At all times relevant hereto, the actions (and/or omissions) of the Defendants were carried out by sufficiently high-ranking officials and was part of policy, official or unofficial and not a departure from any policy.

STATEMENT OF THE CASE

10. The action against Defendants Cheffins, Wilk and Rowe are filed in both their official and individual capacity.
11. Plaintiff contends that race/color (Black), age (over 40), and reprisal for protected-activities, are factors the Defendant systematically unlawfully uses as a custom, practice, and pattern to knowingly deprive individuals of equal condition of employment.

12. Plaintiff contends that she is a member of protected-classes, race/color (Black) and age (over 40).
13. Plaintiff contends that acts, conduct, and/or omissions she charges as discriminatory and/or retaliatory, are related, and/or a part of the same set of events and/or circumstances associated with like applicants who are members of the same protected classes.
14. Plaintiff contends that she is well qualified for the position in question and has qualifications of a prevailing "Well-Qualified" rating.
15. Plaintiff contends that because of their race/color (Black) and age (over 40) she and her sister were deprived of equal conditions of employment.
16. Plaintiff contends that the original misplacement of she and her sisters applications, and the thereafter "unjust" scrutiny associated with her rating created a hostile application process, and disparity in treatment for she and her sister.
17. Plaintiff contends that the unjust scrutiny caused unjust stress and directly affected her employment consideration and her sister's employment.
18. Plaintiff contends that individuals who are not of the protected-classes, in particular Katrina Dunderdale, and BHA law clerks in Philadelphia and Harrisburg were given much better treatment and not scrutinized in a like manner.
 - (a) A Welfare Hearing Officer position was previously given to an individual who worked "across the hallway" on the 10th floor of the BHA offices;
 - (b) A Welfare Hearing Officer (WHO) position was previously given to the 20 plus year roommate of a Welfare Hearing Officer Supervisor.
 - (c) The two new January 2000 WHO positions were not advertised in Allegheny County's predominately African-American offices.

19. Therefore, the Plaintiff contends on more than one occasion , which is a pattern Defendant's displayed displeasure with the race/color (Black) and age (over 40) of the Plaintiff.
20. Plaintiff contends that the open display of the Defendant's displeasure with race/color (Black) and age (over 40), and the adverse treatment that is associated with the employment record infers a custom, pattern, and practice. That is a "causal connection between the protected activity and the action and/or disparity of treatment against applicants based on race/color (Black) and age (over 40)."
21. Plaintiff contends that the "unlawfulness of the custom, pattern and practice" is so apparent that no reasonable official of the Defendant could have believed such action lawful
22. Plaintiff contends that the Defendant, having the knowledge of the wrongs and having the power to prevent or aid in preventing the commission of the same neglected or refused to take reasonable diligence to prevent what they could have prevented.
23. Plaintiff contends that Defendant Cheffins created the non civil service position of Law Clerk to circumvent the Civil Service Act.
24. Plaintiff contends that Defendant Cheffins on or about June of 1998 promoted an unqualified Law Clerk in less than twelve months to Attorney II and then recommended her for the position Manager for the DPW Bureau of Hearings and Appeals.
25. Plaintiff contends that a person given a non civil service position of Law Clerk with the proviso that she would be promoted to Attorney II when she qualified is unqualified for the Attorney II position for which she sought, and therefore selection was non merit selection calculated to favor such person over persons qualified for promotion.

26. It is contended that the Defendants acting in concert held Dunderdale's promotion to Manager for the DPW Bureau of Hearings and Appeals as recommended by DPW in 1998 as only one promotion can be given within a twelve-month period.
27. Plaintiff contends that the Manager position was pretextually advertised again as a merit selection Civil Service position in July of 1999.
28. Plaintiff contends that she and her sister applied for employment as the Welfare Hearing and Appeals Manager for the DPW Bureau of Hearings and Appeals in Pittsburgh in 1999.
29. Plaintiff contends that she and her sister were as qualified as the successful candidate was and Defendant Cheffins disqualified she and her sister for reasons that the successful candidate, Katrina Dunderdale was qualified because they are African American.
30. Plaintiff contends that the pretextual disparaging statements concerning the denial of a "Well-Qualified" rating and the basis for the denial of her sister's continued employment are untrue.
31. Plaintiff contends that she and her sister complained to then DPW Deputy Secretary Linda Hicks and others in both an administrative and supervisory capacity.
32. Plaintiff contends that she and her sister complained to the Commonwealth Civil Service Commission.
33. Plaintiff contends that Defendant Wilk stated he found no evidence indicating a violation of the Civil Service Act even though to be Well-Qualified required an affirmative answer to the State Civil Service Commission Accelerated Examination Part 2, Question 2 have you supervised other adjudicators.

34. Plaintiff contends that the DPW organization chart published in November of 1999 showed the successful candidate, Katrina Dunderdale, supervised no one and should not have been certified Well-Qualified..
35. Plaintiff contends when she asked CSC to define supervising it stated it was the signing of leave slips and conducting performance evaluations.
36. Plaintiff contends that the Department of Public Welfare (DPW) had recommended Dunderdale for the promotion a second time prior to October of 1999 effective December 25, 1999 from Certification 10847.
37. Plaintiff contends that before working as a Law Clerk for DPW, Dunderdale possessed limited legal or professional experience.
38. This action is brought against the above-named Defendants and the responsible unknown individuals in their official and individual capacity.
39. Further, the acts and intentional conduct was not privileged and the Plaintiff did suffer actual legal damages.
40. Plaintiff contends that she and her sister are now forced to confront resulting stigmatism on a daily basis.
41. Plaintiff contends that the legal damages she and her sister suffered are, but not limited to, the following:
- (a) Loss of liberty and enjoyment of property;
 - (b) Loss of privacy;
 - (c) Loss of good name and reputation in their neighborhood, home community, and with prospective employers;
 - (d) Loss of employment and future employment.

COUNT ONE

Fourteenth Amendment to the United States Constitution, 42 U.S.C. sections 1981, 1983, 1985, 1986 and 1988, and Equal Employment Opportunity Act (Title VII) 42 U.S.C. Section 2000e et. Seq. Plaintiff incorporates all of the allegations of paragraphs 1 through 41, inclusive.

In addition, the Plaintiff duly exhausted her administrative remedies by filing various complaints regarding the continual events, and complained of herein with the EEOC. An EEOC Notice of Suit Rights will be mailed the week of May 2, 2005.

COUNT TWO

Pendent jurisdiction claims grounded in the Pennsylvania Constitution, Article 1 section 1, 2, 5, 7, 11 and 26. The Pennsylvania Human Relations Act, (43 P.S. sections 955). Plaintiff incorporates all of the allegations of paragraph 1 through 41, inclusive. In addition, the Plaintiff duly exhausted her administrative remedies by filing various complaints regarding the continual events, and complained of herein with the PHRC that was cross-filed with the EEOC. PHRC suit rights toll May 7, 2005.

PRAYED RELIEF

Plaintiff seeks compensatory and punitive damages, back wages, future wages, costs, fees and reasonable legal expenses.

WHEREFORE, for the above stated reasons, the prayed relief should be granted

Respectfully Submitted,
Cheryl R. McAbee
Cheryl R. McAbee
Pro Se Attorney
2005 Garrick Drive
Pittsburgh, PA 15235
(412) 952-4321
ID# 44344

Dated: April 26, 2005

VERIFICATION

I, the undersigned, do hereby certify under penalty of perjury that the forgoing information is true and correct to the best of my understanding and belief, under the penalty of perjury.

Charlene R. McAbee
Charlene R. McAbee

05 0564

JS 44 (Rev. 11-87)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CHARLENE R. McABEE

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

2005 GARRICK DRIVE
PITTSBURGH, PA 15235

DEFENDANTS

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorney's (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☒ 1 U.S. Government
Plaintiff☒ 3 Federal Question
(U.S. Government Not a Party)☐ 2 U.S. Government
Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
and One Box for Defendant)Citizens of This State ☐ 1 ☐ 1 Incorporated or Principal Place
of Business in This State ☐ 4 ☐ 4Citizens of Another State ☐ 2 ☐ 2 Incorporated and Principal Place
of Business in Another State ☐ 5 ☐ 5Citizens or Subject of a
Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 100 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor <input type="checkbox"/> 140 Negligence <input type="checkbox"/> 150 Recovery of Overpayment <input type="checkbox"/> 160 Recovery of Judgment <input type="checkbox"/> 170 Maritime <input type="checkbox"/> 180 Recovery of Defuncted <input type="checkbox"/> 190 Student Loans <input type="checkbox"/> 200 Recovery of Overpayment <input type="checkbox"/> 210 Vendor's Bonds <input type="checkbox"/> 220 Suretyholders' Bonds <input type="checkbox"/> 230 Other Contract <input type="checkbox"/> 240 Contract Product Liability <input type="checkbox"/> 250 Other Contract	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product <input type="checkbox"/> 320 Assault, Libel & <input type="checkbox"/> 325 Federal Employers' <input type="checkbox"/> 330 Marine <input type="checkbox"/> 335 Marine Product <input type="checkbox"/> 340 Motor Vehicle <input type="checkbox"/> 345 Motor Vehicle <input type="checkbox"/> 350 Product Liability <input type="checkbox"/> 355 Other Personal <input type="checkbox"/> 360 Other Civil Rights	<input type="checkbox"/> 362 Personal Injury - <input type="checkbox"/> 365 Personal Injury - <input type="checkbox"/> 368 Automobile Personal <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 390 Property Damage <input type="checkbox"/> 395 Other Personal <input type="checkbox"/> 400 Other Civil Rights	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Related Seizure <input type="checkbox"/> 430 Liquor Laws <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 450 Airline Regs. <input type="checkbox"/> 460 Occupational <input type="checkbox"/> 465 Other <input type="checkbox"/> 470 Fair Labor Standards <input type="checkbox"/> 475 Labor/Mgmt. Relations <input type="checkbox"/> 480 Labor/Mgmt. Reporting <input type="checkbox"/> 485 Labor Act <input type="checkbox"/> 490 Railway Labor Act <input type="checkbox"/> 495 Other Labor Litigation <input type="checkbox"/> 500 Empl. Ret. Inc. <input type="checkbox"/> 505 Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 <input type="checkbox"/> 430 Copyright <input type="checkbox"/> 435 Patent <input type="checkbox"/> 440 Trademark <input type="checkbox"/> 441 HIA (1395a) <input type="checkbox"/> 442 Black Lung (923) <input type="checkbox"/> 443 DWC/DWW (405(a)) <input type="checkbox"/> 444 SSID Title XVI <input type="checkbox"/> 445 RSI (405(a)) <input type="checkbox"/> 470 Taxes (U.S. Plaintiff <input type="checkbox"/> 475 Taxes (U.S. Defendant) <input type="checkbox"/> 480 IRS—Third Party <input type="checkbox"/> 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 430 Commerce <input type="checkbox"/> 440 Deportation <input type="checkbox"/> 450 Racketeer Influenced and <input type="checkbox"/> 460 Corrupt Organizations <input type="checkbox"/> 470 Consumer Credit <input type="checkbox"/> 480 Cable/Sat TV <input type="checkbox"/> 490 Selective Service <input type="checkbox"/> 500 Securities/Commodities/ <input type="checkbox"/> 510 Exchange <input type="checkbox"/> 520 Customer Challenge <input type="checkbox"/> 530 12 USC 3410 <input type="checkbox"/> 540 Other Statutory Actions <input type="checkbox"/> 550 Agricultural Act <input type="checkbox"/> 560 Economic Stabilization Act <input type="checkbox"/> 570 Environmental Matters <input type="checkbox"/> 580 Energy Allocation Act <input type="checkbox"/> 590 Freedom of Information <input type="checkbox"/> 600 Act <input type="checkbox"/> 610 Appeal of For Determination <input type="checkbox"/> 620 Under Equal Access <input type="checkbox"/> 630 to Justice <input type="checkbox"/> 640 Constitutionality of <input type="checkbox"/> 650 State Statutes

ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original
Filing☐ 2 Removed from
State Court☐ 3 Remanded from
Appellate Court☐ 4 Reinstated or
Recovered☐ 5 Transferred from
another district
(specify)☐ 6 Multidistrict
Litigation☐ 7 Appeal to District
Judge from
Magistrate
Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

CIVIL RIGHTS (EMPLOYMENT)

VII. REQUESTED IN
COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ NoVIII. RELATED CASE(S)
IF ANY

(See instructions):

JUDGE

Joy Flowers' CONTI

DOCKET NUMBER

03-1270

DATE

4-29-05

SIGNATURE OF ATTORNEY OF RECORD

Charlene R. McAbee

FOR OFFICE USE ONLY

RECEIVED

AMOUNT

APPLYING FFF

JUDGE

MAG. JUDGE